IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6086 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUMANCHANDRA MULCHANDAS SONI

Versus

STATE OF GUJARAT

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Appearance:

MS SHRADDHA TRIVEDI for Petitioner

Mr.R.C.Kodekar, A.G.P. for Respondents

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/02/2001

ORAL JUDGEMENT

1. The facts giving rise to this petition are as under :

The petitioner is serving as X-Ray Technician at Zalod, District Panch Mahals in the Community Health

Centre. Zalod is a tribal area and the Government employees posted in such area were granted tribal allowance as per the Resolution of the Government. Initially the petitioner did not know that tribal allowance is payable to him and when he came to know of such allowance being admissible to him he made an application claiming tribal allowance with effect from 1.1.1988. The first grievance therefore is that he was not given tribal allowance for two years six months and twenty days. The second grievance is that he was not paid House Rent Allowance at the rate of Rs.75/- p.m. since 1988 in view of Government Resolution Annexure : A. His third grievance is that he has not been paid Special Pay at the rate of rs.30/- p.m. as X-Ray Technician till 4.8.1988. Since his grievances were not heard by his Superior he applied to the Health Secretary on 17.10.1988 and 27.1.1989, but again got no relief. He, therefore, applied to the Gujarat Civil Service Tribunal by filing Appeal No.392 of 1989 which was dismissed. His next claim is that he was on Leave and the department has deducted and not paid him Special Pay, House Rent Allowance, etc. becoming due for him for the leave period which is contrary to the provisions of Rule : 339 of B.C.S.R. Rules. He has, therefore, filed this petition praying that the respondents be directed to give tribal allowance due to him from 10.6.1986 to 31.12.1987 with interest and be further directed to pay arrears of House Rent Allowance and Special Pay as well as tribal allowance deducted by the respondents during leave period. The next prayer is that the respondents be directed to pay House Rent Allowance due to the petitioner.

2. Counter Affidavit has been filed by the respondents. On 18.1.2001 request was made by the petitioner's Counsel for time to file rejoinder. Time was granted but no rejoinder has been filed till today.

3. Having examined the petition and the counter Affidavit filed by the respondents I am of the view that there is no merit in this petition.

4. So far as claim of tribal allowance is concerned, in Para : 2 of the counter Affidavit it has been deposed that the tribal allowance is granted to the Government servant working in the scheduled or tribal areas/tribal development blocks on the condition No.3 mentioned in the Government Resolution. Under this condition the Government Servant is entitled for the tribal allowance if he is willing to work in scheduled or tribal area for a period of not less than 4 to 6 years and he should give

an undertaking to that effect in writing. The petitioner applied for grant of tribal allowance on 31.12.1987 giving the desired undertaking required under the condition No.3 of the Government resolution and accordingly the petitioner was granted tribal allowance with effect from that date, namely, 31.12.1987. In the absence of written undertaking the petitioner was rightly not granted tribal allowance before 31.12.1987. Consequently this claim of the petitioner cannot be sustained.

5. Regarding House Rent Allowance it is stated in the counter Affidavit that the Government has granted facility of rent free accommodation. As per the G.R. the Government have not granted rent free accommodation facilities for X-Ray Technician in Community Centre and Government Hospital at Zalod. It was converted into Community Health Centre with effect from 15.6.1987. As such X-Ray technicians working in the Community Health Centre are not entitled to rent free accommodation. Since the petitioner was working as X-Ray Technician in Community Health Centre at Zalod he was not entitled for rent free accommodation and as such he was not granted House Rent Allowance with effect from 1.9.1988. The petitioner was however provided Government Quarter at Zalod on 21.8.1986, but he refused to accept it and returned the same on 23.8.1986 i.e. two days after allotment of Government Quarter to him. The said quarter was then allotted to another staff nurse. Consequently it cannot be said that the said quarter was not fit for residence. The next allottee occupied the same from 4.12.1988 to 3.7.1991 and onwards. According to the counter Affidavit the Government servants refusing Government accommodation offered to them are not entitled to House Rent Allowance including House Rent Allowance in view of rent free accommodation. Since the petitioner was not entitled to rent free accommodation and was offered quarter but refused to accept the same he was not entitled to House Rent Allowance as claimed by him. The stand in the counter Affidavit is therefore justified.

6. Regarding Special Pay it is stated in the counter Affidavit that the petitioner was paid Special Pay at the rate of Rs.30/- p.m. from August 1986 to May 1987 and at the rate of Rs.50/- p.m. from June, 1987 onwards in accordance with the existing rules. As such it is also incorrect that Special Pay was not paid to the petitioner.

7. Regarding petitioner's grievance that House Rent Allowance was deducted from the leave period or tribal

allowance was deducted for the said period, a definite reply has come in Para : 7 of the counter Affidavit that no deduction on account of house rent allowance during leave period has been made from the salary of the petitioner.

8. Regarding Special Pay not paid during the leave period the stand of the respondent is that Special Pay is granted for adverse effect of radiation, but since the petitioner did not perform his duty during leave period no special pay can be paid to him. This stand is also justified.

9. In view of aforesaid discussion I do not find any merit in this petition which is hereby dismissed with no order as to costs.

sd/-

Date : February 06, 2001 ( D. C. Srivastava, J. )

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